

**State of New York**  
**Court of Appeals**

**Decisions**

December 16, 2021

**CASES**

4                      No. 78

Candy Anderson,  
Respondent,

v.

Jack E. Anderson,  
Appellant.

Order affirmed, with costs.

Opinion by Judge Rivera.

Chief Judge DiFiore and Judges Fahey, Garcia,  
Wilson, Singas and Cannataro concur.

1                      No. 76

Estate of Margaret Kainer, &c., et al.,  
Appellants,

v.

UBS AG, &c., et al.,  
Respondents,

et al.,

Defendants.

Order insofar as appealed from affirmed, with costs.

Opinion by Judge Cannataro.

Chief Judge DiFiore and Judges Garcia, Wilson and  
Singas concur.

Judge Fahey dissents in an opinion.

Judge Rivera took no part.

2                      No. 79

In the Matter of William F. Koegel, &c.

John B. Koegel,  
Respondent;

Irene Lawrence Koegel,  
Appellant.

Order appealed from and prior Appellate Division  
order brought up for review affirmed, with costs.

Opinion by Judge Rivera.

Chief Judge DiFiore and Judges Fahey, Garcia,  
Wilson, Singas and Cannataro concur.

1                      No. 77  
The People &c.,  
    Respondent,  
    v.  
Michael Lamb,  
    Appellant.

                        No. 73  
Plymouth Venture Partners, II, L.P. et al.,  
    Appellants,  
    v.  
GTR Source, LLC et al.,  
    Respondents.  
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Plymouth Venture Partners, II, L.P. et al.,  
    Appellants,  
    v.  
Capital Merchant Services, LLC,  
    Respondent.

Order modified by vacating defendant's convictions for sex trafficking and ordering a new trial on those counts and, as so modified, affirmed, in a memorandum.

Chief Judge DiFiore and Judges Rivera, Garcia, Wilson, Singas and Cannataro concur, Judge Singas in a concurring opinion, in which Chief Judge DiFiore and Judge Cannataro concur, and Judge Wilson in a separate concurring opinion, in which Judges Rivera and Garcia concur.

Judge Fahey dissents in part and votes to affirm in an opinion.

Following certification of questions by the United States Court of Appeals for the Second Circuit and acceptance of the questions by this Court pursuant to section 500.27 of this Court's Rules of Practice, and after hearing argument by counsel for the parties and consideration of the briefs and record submitted, certified questions answered in accordance with the opinion herein.

Opinion by Judge Garcia.

Chief Judge DiFiore and Judges Singas and Cannataro concur.

Judge Fahey dissents in an opinion, in which Judge Rivera concurs.

Judge Wilson dissents in a separate dissenting opinion.

## MOTIONS

4                    Mo. No. 2021-677  
Joseph Andalaro,  
Appellant,  
v.  
Board of Education of Syracuse City School  
District,  
Respondent.

Motion for leave to appeal denied with one hundred dollars costs and necessary reproduction disbursements.

1                    Mo. No. 2021-564  
Melba Bacourt,  
Appellant,  
v.  
City of New York, et al.,  
Respondents.

Motion for leave to appeal denied.

1                    Mo. No. 2021-709  
Bison Capital Corporation,  
Appellant,  
v.  
Hunton & Williams LLP,  
Respondent.

Motion for leave to appeal dismissed upon the ground that the order sought to be appealed from does not finally determine the action within the meaning of the Constitution.

1                    Mo. No. 2021-736  
Breakaway Courier Corporation, &c.,  
Appellant,  
v.  
Berkshire Hathaway, Inc.,  
Respondent,  
et al.,  
Defendants.

Motion for leave to appeal denied.

1                    Mo. No. 2021-737  
Current Lighting & Electric, Inc. et al.,  
Appellants,  
v.  
Berkshire Hathaway, Inc.,  
Respondent,  
et al.,  
Defendants.

Motion for leave to appeal denied.

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Alternative Fuels Transportation, Inc.,  
Appellant,  
v.  
Berkshire Hathaway, Inc.,  
Respondent,  
et al.,  
Defendants.

3                    Mo. No. 2021-687  
In the Matter of Thomas Carl Bruni,  
Appellant,  
v.  
New York State Commission of Correction, et  
al.,  
Respondents.

Motion for leave to appeal denied.  
Motion for poor person relief dismissed as academic.

4                    Mo. No. 2021-701  
Buffalo Emergency Associates, LLP, et al.,  
Appellants,  
v.  
Aetna Health, Inc., et al.,  
Respondents.

Motion for leave to appeal denied with one hundred  
dollars costs and necessary reproduction  
disbursements.

3                    Mo. No. 2021-868  
In the Matter of Alexandra Perez Cid, &c.,  
Respondent,  
v.  
Patrick DiSanto,  
Appellant.

Motion for leave to appeal dismissed upon the  
ground that the order sought to be appealed from  
does not finally determine the proceeding within the  
meaning of the Constitution.  
Motion for poor person relief dismissed as academic.

3                    Mo. No. 2021-643  
In the Matter of Scott Clayton,  
                    Appellant,  
                    v.  
Chemung County District Attorney Weeden  
Wetmore,  
                    Respondent.

Motion for leave to appeal denied.

2                    Mo. No. 2021-726  
The People &c.,  
                    Respondent,  
                    v.  
Michael Cognato,  
                    Appellant.

Motion for leave to appeal denied.

1                    Mo. No. 2021-749  
Allen C. Dawson,  
                    Appellant,  
                    v.  
New York University,  
                    Respondent.

Motion for leave to appeal granted.

1                    Mo. No. 2021-616  
The People &c.,  
                    Appellant,  
                    v.  
Empire Bonding & Insurance Co.,  
                    Respondent,  
et al.,  
                    Defendant.

Motion for leave to appeal denied.

1                    Mo. No. 2021-735  
Gottesman Company,  
                    Appellant,  
                    v.  
A.E.W., Inc., &c., et al.,  
                    Respondents.

Motion for leave to appeal denied.

2                    Mo. No. 2021-778  
Hudson City Savings Bank,  
Respondent,  
v.  
David Berry et al.,  
Appellants,  
et al.,  
Defendants.

Motion for leave to appeal denied.

3                    Mo. No. 2021-721  
In the Matter of Johnathan Johnson,  
Appellant,  
v.  
Anthony J. Annucci, &c., et al.,  
Respondents.

Motion for leave to appeal dismissed upon the  
ground that the order sought to be appealed from  
does not finally determine the proceeding within the  
meaning of the Constitution.

4                    Mo. No. 2021-720  
The People &c.,  
Respondent,  
v.  
Ronald Jones,  
Appellant.

Motion for leave to appeal denied.  
Motion for poor person relief dismissed as academic.

2                    Mo. No. 2021-745  
The People &c.,  
Respondent,  
v.  
Robert Jones,  
Appellant.

Motion for leave to appeal denied.

1                    Mo. No. 2021-741  
Lifetime Technology, Inc., et al.,  
Appellants,  
v.  
Portables Unlimited, Inc. et al.,  
Respondents,  
et al.,  
Defendants.

Motion for leave to appeal denied with one hundred  
dollars costs and necessary reproduction  
disbursements.

1 Mo. No. 2021-891

Nella Manko,

Appellant,

v.

Dr. Dana Mannor, et al.,

Respondents,

Lenox Hill Hospital, &c. et al.,

Defendants.

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Nella Manko,

Appellant,

v.

Dana Mannor, et al.,

Respondents,

"Anesthesiologist" (a fictitious name), et al.,

Defendants.

Motion for reconsideration of this Court's September 9, 2021 dismissal order denied.

Motion for poor person relief dismissed as academic.  
Chief Judge DiFiore took no part.

1 Mo. No. 2021-684

The People &c.,

Respondent,

v.

David McCollum,

Appellant.

Motion for leave to appeal denied.

Motion for poor person relief dismissed as academic.

1 Mo. No. 2021-774

The People &c.,

Plaintiff,

v.

J. Ezra Merkin et al.,

Defendants,

Ascot Partners, L.P.,

Respondent,

Geraldine Fabrikant,

Appellant,

Sandalwood Debt Fund A, L.P., et al.,

Appellants,

et al.,

Relief Defendants.

Motions for leave to appeal denied.

1                    Mo. No. 2021-796  
The People &c.,  
    Plaintiff,  
    v.  
J. Ezra Merkin et al.,  
    Defendants,  
Ascot Partners, L.P.,  
    Respondent,  
Geraldine Fabrikant,  
    Appellant,  
Sandalwood Debt Fund A, L.P., et al.,  
    Appellants,  
et al.,  
    Relief Defendants.

Motion by Canyon Partners, LLC for leave to appear  
amicus curiae on the motion for leave to appeal by  
appellants Sandalwood Debt Fund A, L.P., et al.  
granted and the proposed brief is accepted as filed.

2                    Mo. No. 2021-712  
Jude Mezar et al.,  
    Appellants,  
    v.  
Louis DeFranco, &c., et al.,  
    Respondents.

Motion for leave to appeal denied.

2                    Mo. No. 2021-739  
The People &c.,  
    Respondent,  
    v.  
Layshawn Mitchell,  
    Appellant.

Motion for leave to appeal denied.

3                    Mo. No. 2021-724  
MTGLQ Investors, L.P.,  
    Appellant,  
    v.  
Robert J. Wentworth et al.,  
    Respondents,  
et al.,  
    Defendants.

Motion for leave to appeal denied.



4                    Mo. No. 2021-651  
The People &c. ex rel. Michael Rhynes,  
Appellant,

v.  
New York State Department of Corrections  
and Community Supervision,  
Respondent.

Motion for leave to appeal denied.

4                    Mo. No. 2021-704  
The People &c.,  
Respondent,

v.  
Brian Sanders,  
Appellant.

Motion for leave to appeal denied.

2                    Mo. No. 2021-635  
In the Matter of Christopher Sekul,  
Appellant,

v.  
City of Poughkeepsie, et al.,  
Respondents.

Motion for leave to appeal denied with one hundred  
dollars costs and necessary reproduction  
disbursements.

4                    Mo. No. 2021-731  
In the Matter of Montgomery Blair Sibley,  
Appellant,

v.  
Chauncey Joseph Watches,  
Respondent.

On the Court's own motion, appeal dismissed,  
without costs, upon the ground that no substantial  
constitutional question is directly involved.

Motion for leave to appeal denied.

Motion for ancillary relief dismissed as academic.

2                    Mo. No. 2021-771  
County of Suffolk,  
Respondent,

v.  
Ironshore Indemnity, Inc.,  
Appellant,  
Lexington Insurance Company,  
Appellant,  
et al.,  
Defendants.

Motions for leave to appeal dismissed upon the  
ground that the order sought to be appealed from  
does not finally determine the action within the  
meaning of the Constitution.

Mo. No. 2021-892

Motion for reargument denied.

The People &c.,  
Respondent,  
v.  
Carlos Torres,  
Appellant.